

ORIGINAL

ORIGINAL

4/4/92
J. J.

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

ATTORNEYS AT LAW

1130 CONNECTICUT AVENUE, N.W., SUITE 750

WASHINGTON, D.C. 20036-3904

TELEFAX (202) 457-8558

TELEPHONE (202) 429-8910

RALEIGH ADDRESS

3200 BEECHLEAF COURT, SUITE 500
RALEIGH, NORTH CAROLINA 27604-1064
TELEFAX (919) 981-4300
TELEPHONE (919) 981-4000

ROCK HILL OFFICE

448 LAKESHORE PARKWAY, SUITE 200
ROCK HILL, SOUTH CAROLINA 29730-4264
TELEFAX (803) 324-2093
TELEPHONE (803) 324-8118

RECEIVED

MAR 26 1992

Federal Communications Commission
Office of the Secretary

March 26, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: David A. Ringer
BPH-911230MA
Channel 280A
Westerville, Ohio

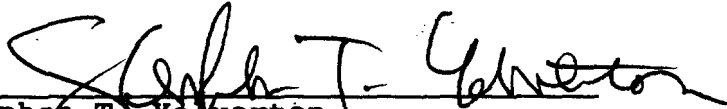
Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and four (4) copies of its petition to deny and dismiss the application of David A. Ringer.

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 
Stephen T. Yelverton
Attorneys for Ohio Radio
Associates, Inc.

pmh/styl/1450324B

RECEIVED

MAR 26 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Federal Communications Commission
Office of the Secretary

In Re Application of:

DAVID A. RINGER

File No. BPH-911230MA

Application for Construction
Permit for a new FM station,
Channel 280A, Westerville,
Ohio

TO: Chief, Audio Services
Division

MAR 27 11 26 AM '92
AUDIO SERVICES

PETITION TO DENY AND DISMISS THE APPLICATION
OF DAVID A. RINGER

Ohio Radio Associates, Inc. ("ORA"), by its attorneys,
pursuant to Section 73.3584(a) of the Commission's Rules, hereby
submits this petition to deny and dismiss the application of
David A. Ringer ("Ringer"). This petition is timely filed
pursuant to Public Notice, Report No. NA-156, released
February 21, 1992, establishing a deadline of March 26, 1992, to
file petitions to deny in this proceeding. ORA requests that the

is required. Ringer proposes use of the former Station WBBY-FM tower site. However, this tower is located 106.16 km. from Station WTTF-FM. Thus, the short-spacing is 6.84 km.

ORA and another applicant in the proceeding, Westerville Broadcasting Company, Limited Partnership, are fully-spaced to all stations and pending applications,¹ including Station WTTF-FM. Under long-established Commission policy in comparative hearings, when an applicant is short-spaced and at least one other applicant in the proceeding is fully-spaced and no question is raised as to the availability or technical suitability of the fully-spaced site, the short-spaced applicant must be denied. That applicant will not be designated for hearing and will be immediately dismissed from the proceeding. Madalina Broadcasting, Inc., 6 FCC Rcd. 2508, 2509, paras. 3-5 (MMB 1991); Valley Radio, 5 FCC Rcd. 4875, 4876, para. 5 (MMB 1990); Donavan Burke, 104 FCC2d 843 (1986). See also. Megamedia.

paras. 2, 5, 26, 30 (1988), the Commission stated that even the liberal provisions of Sections 73.215, as to directional antennas, could only be utilized where fully-spaced tower sites are unavailable or had limited suitability. To hold otherwise, would effectively repeal Section 73.207 and would allow tower sites to be placed anywhere, so long as no actual interference is caused. Lack of interference is not the sole rationale for the minimum spacing requirements of Section 73.207. North Texas Media, Inc. v. FCC, supra, at 33-34, n. 27. These rules are designed to allow licensees flexibility and lee-way to subsequently improve their facilities. Supra, at 31.

Section 73.215 does not eliminate short-spacing, or

proposed short-spacing. Under Section 73.213(c)(2), applications for authorization of Class A facilities greater than 3.0 kw. (in any lobe or radial) and at 100 meters must submit an exhibit demonstrating the consent of the licensee for which the requirements of Section 73.207 are not met.² Ringer failed to submit any such consent from the licensee of Station WTTF-FM.

The Commission, in MM Docket No. 88-375, 6 FCC Rcd. 6375, 6382, para. 52 (1991), stated that in a power increase, under Section 73.213, between a Class A station and other facilities, no fully-spaced or less short-spaced site must be available. Here, a fully-spaced site is available and technically suitable. See also. MM Docket No. 88-375, 6 FCC Rcd.

CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of
Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this
26th day of March, 1992, I have caused to be hand delivered or
mailed, U.S. mail, postage prepaid, a copy of the foregoing
"Petition to Deny and Dismiss the Application of David A. Ringer"
to the following:

Dennis Williams, Chief*
FM Branch
Room 332
Federal Communications Commission
Washington, D.C. 20554

Arthur V. Belendiuk, Esquire
Smithwick & Belendiuk, P.C.
2033 M Street, N.W.
Suite 207
Washington, D.C. 20036
Counsel for David A. Ringer

Kate D. Shawcross
Kate D. Shawcross
L.S.T.C.

Hand Delivery*
pmh/styl/1450324B